IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.11.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT PETITION NO.7523 of 1997
and WPMP.No.14894 of 2006

....

Association of Engineers
Tamil Nadu Public Works Department
Chepauk, Chennai 5, rep. by its
General Secretary A. Veerappan. .. Petitioner

vs.

1. The Tamil Nadu Administrative
   Tribunal, Chennai 104.

2. The Government of Tamil Nadu
   rep. by its Secretary to Government
   Public Works Department
   Fort St. George
   Chennai 9.

3. The Chief Engineer (General)
   Public Works Department
   Chepauk, Chennai-5

4. The Tamil Nadu Public Service
   Commission rep. by its Secretary
   Government Estate, Chennai 2.

5. B. Asokan
6. R. Ravichandran
7. R. Natarajan
8. S. Thiagarajan
9. R. Ravi

Respondents 5 to 9 C/o The Chief Engineer (General)
Public Works Department, Chepauk, Chennai-5

10. Association of Tamil Nadu Engineering
    Graduates, rep. by its General Secretary
    A. Senthilkumar.

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11. T. Kannan
12. V. Indiran
13. A.P. Venkatachalam
(R.10 to R.13 were impleaded as respondents as per order of this Court dated 13.04.2006 made in WMP.Nos.794/98, 7292/06, 11660/06 and 11661 of 2006 respectively). .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr. M. Venkatachalapathy
Senior Counsel
for Mr. M. Sriram

For respondents : Mr. P. Subramanian
Government Advocate for R.2to4

Mr. K. Sridhar for R.7
Mr. N. Subramanian for R.11
Mr. S. Vadivel for R.12&13
No appearance for R.5,6 & 8to10
R1 - Tribunal

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ORDER

(ORDER of the Court was made by P. SATHASIVAM,J.)

The Association of Engineers, Tamil Nadu Public Works Department, Chepauk, Chennai-5, through its General Secretary A. Veerappan, has filed the above writ petition seeking to quash the order of the Tamil Nadu Administrative Tribunal, Chennai made in O.A.No.3348 of 1994 dated 17.04.1997 and consequently, direct the respondents 2 to 4 to forthwith comply with the process of selection and appointment of Assistant Engineers, pursuant to the advertisement given by the 4th respondent – Tamil Nadu Public Service Commission (in short "TNPSC"), Chennai-2 in Advertisement No.9/94.

2. According to the petitioner, the petitioner Association has been formed as a non-political and non-profit making service organization at the State level as early as in 1936 and recognized by the Government of Tamil Nadu to represent and agitate, through lawful means, the grievance of members of the petitioner Association and to ameliorate their conditions of service and also to vindicate the rights of its members, who are all Graduate Engineers.

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3. The relief sought for by the applicants in O.A.No.3348 of 1994 before the Tamil Nadu Administrative Tribunal – first respondent herein, is a direction to quash the Advertisement No.9/94 of the TNPSC for the post of Assistant Engineers and consequently, consider the claim of the applicants in the said original application for appointment as Assistant Engineers on the basis of G.O.Ms.No.1/90 PWD dated 02.01.1990 and G.O.Ms.No.88/91 PWD dated 22.01.1991 with all benefits, perquisites, privileges etc., in the vacancies from 1986 onwards. G.O.Ms.No.1, Public Works Department, dated 02.01.1990 brought in certain changes to the Tamil Nadu Engineering Service. The said Government Order is of administrative character and till date, no amendments under Article 309 of the Constitution have been made. However, as per the said Government Order, Junior Drafting Officers, Drafting Officers, Overseers and Technical Assistants in the Public Works Department, who have put in five years of service will be eligible to be appointed as Assistant Engineers by recruitment by transfer of service on acquiring B.E., / A.M.I.E., qualification. The practice hitherto is that those persons in service in the said categories, who acquired the qualification of B.E./A.M.I.E. degree either by undergoing regular course or by attending evening college, are eligible to be considered for appointment through TNPSC, with age relaxation, if any. The said Government Order affects the entire administration and method of recruitment vis-à-vis the recruitment by TNPSC. The petitioner Association was addressing their grievance at all levels, bringing out the injustice, which is sought to be meted out to the graduates who are afresh from the College. In the Department of Highways and Rural Works, there is no scope for appointment of Assistant Engineers by recruitment by transfer of service from among those who acquired the degree qualification. The persons who acquired the degree qualification are eligible and entitled to make their claim through TNPSC as and when vacancies are notified as specified in G.O.Ms.No.3037 Public Works Department dated 22.12.1986. Even till date, the said Government Order, viz., G.O.Ms.No.1/90 PWD dated 02.01.1990 has not been implemented, since no statutory amendments have been issued to the existing Service Rules in the Tamil Nadu Engineering Service of Public Works Department.

4. While the matter stood like this, the applicants in O.A.No.3348 of 1994, approached the first respondent Tribunal with a prayer referred to above. Similar applications have also been filed by other individuals and Technical Assistants. The Tribunal without proper appreciation of facts and on a mistaken view of law governing the issue, while accepting the stand of the petitioners to some extent, allowed the claims of the Junior Drafting Officers and Drafting Officers and rejected the claim of the Technical Assistants. Aggrieved by the said order, having no other effective remedy, the petitioner Association is invoking extra ordinary jurisdiction of this Court.

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5. On Behalf of respondents 2 and 3, the Joint Secretary to Government, Public Works Department, Secretariat, Chennai-9 has filed a counter affidavit highlighting their stand. In the counter affidavit, he explained the stand of the Government and the ultimate order of the Tribunal and also highlighted that there is no basis for the apprehension entertained in the mind of the Engineering Graduates.

6. Heard the learned senior counsel for the petitioner and the learned counsel for the respondents.

7. The only point for consideration in this writ petition is, whether the Tribunal is justified in quashing Advertisement No.9/94 of TNPSC and further directing to consider the applicants in the O.A., along with other feeder categories mentioned in 2(a)(5) of Tamil Nadu Engineering Service Special Rules (in short "the Special Rules") for the Tamil Nadu Engineering Service Recruitment by Transfer and make appointment one out of every four vacancies till altered by statutory amendment.

8. In G.O.Ms.No.1, PWD dated 02.01.1990, the Government has ordered that with effect from the date of issue of the order, Junior Drafting Officers / Drafting Officers / Overseers and Technical Assistants in Public Works Department who have put in five years of service will be eligible to be appointed as Assistant Engineers by transfer of service on acquiring B.E./A.M.I.E., degree qualification. Followed by the said Government Order, the Government requested the Chief Engineer (General) PWD to submit suitable proposals for issue of amendments to the Special Rules for the Tamil Nadu Engineering Service / Tamil Nadu Engineering Subordinate Service for giving statutory effect to this order. It is brought to our notice that the proposal sent by the Chief Engineer is under consideration of the Government.

9. It is also brought to our notice that the very same Government Order was already challenged by the Engineering Graduates in W.P.No.3309 of 1991 before this Court. By order dated 08.03.1991, a learned single Judge of this Court, dismissed the said writ petition holding that appointment to the service in the State can be done either by direct recruitment or by transfer. The learned Judge has also observed that wherever no rule has been made under Article 309 of the Constitution, executive instructions shall be issued to fill up the gap till the rules are framed. The learned Judge further held that, as such, by the impugned order, the Government has made certain persons who are in service eligible to be appointed as Assistant Engineers by transfer of service on their acquiring B.E./A.M.I.E. degree qualification. As rightly pointed out by the learned counsel for the respondents, there is no mention that as to

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whether all the vacancies that arise in the post of Assistant Engineer have to be filled up only by transfer of service. In view of the same, the contention of the petitioner that the said Government Order affects the entire administration and method of recruitment vis-a-vis, the recruitment by TNPSC cannot be accepted.

10. As rightly pointed out, though similar Government Order came to be withdrawn in the Highways Department on the ground that it would affect the Rural Reservation, it is to be noted that in the existing Special Rules for Tamil Nadu Engineering Service prevailing to Public Works Department, there is a provision under Rule 2(a)(5) for the appointment of Assistant Engineer from the feeder categories, such as Junior Engineers, Overseers, Head Draftsman or civil draftsmen of Tamil Nadu Engineering Subordinate Service by recruitment by transfer. The relevant rule reads as under:

> "Rule 2(a) (5) Assistant Engineers. (1) Direct recruitment; or
>
> (2) Recruitment by transfer from Junior Engineers, Overseers, Head Draftsmen or Civil Draftsmen of the Tamil Nadu Engineering Subordinate Service."

11. Though the petitioner claimed that even to-day G.O.Ms.No.1 PWD dated 2.1.90 has not been implemented, in the counter affidavit filed on behalf of respondents 2 and 3, the same has been specifically denied. It is pointed out that as per Rule 2(a)(5) as well as the order dated 17.04.1997 made in O.A.No.3348 of 1994, etc., the orders appointing Assistant Engineers were issued in respect of the vacancies apportioned following the ratio out of total estimated vacancies.

12. Regarding the ratio, viz., 3:1 between the direct recruitment and recruitment by transfer, in the counter affidavit, the Joint Secretary to Government has highlighted that based on G.O.Ms.No.1 PWD dated 02.01.1990, the Public Works Department conducted meeting with various Engineering Associations (including the petitioner Association) on 10.12.1996 and 03.06.1997 in the Chamber of the Secretary to Government, Public Works Department and took a decision to maintain 3:1 ratio between direct recruitment and recruitment by transfer and to implement the order of the Administrative Tribunal dated 17.04.1997. As per the said decision, out of every four vacancies, one vacancy has been apportioned for the appointment of Assistant Engineer by recruitment by transfer from the feeder categories and the remaining 3 vacancies have been apportioned to the direct recruitment to be filled up by TNPSC. In such circumstances, as rightly pointed out by the learned counsel for the respondents, the contention of the petitioner that generally the Graduate Engineers are being affected is not acceptable.

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13. It is also brought to our notice that the Special Rules were amended by G.O.Ms.No.1745 dated 10.10.1972, which were subsequently modified by G.O.Ms.No.1356 dated 02.08.1980 and on the basis of representation, the Government reconsidered those executive orders and issued G.O.Ms.No.1 PWD dated 02.01.1990, stating that with effect from the date of the said order, Junior Drafting Officer, Drafting Officer, Overseers and Technical Assistants, who have put in five years of service will be eligible to be appointed as Assistant Engineers by transfer of service on acquiring B.E./A.M.E.E. degree qualification. We are satisfied that Rule 5 of the Special Rules in no way affects the implementation of the decision of the Tribunal in view of Rule 2(a)(5) of the Special Rules. As observed earlier, it is our duty to mention that in order to implement the orders passed in G.O.Ms.No.1 PWD dated 02.01.1990, the Government have conducted meeting with various Engineering Associations, including the petitioner Association on 10.12.1996 and 03.06.1997 and took a decision to maintain 3:1 ratio between the direct recruitment and recruitment by transfer. As rightly pointed out, members of the petitioner Association are being considered for the number of vacancies apportioned as per the ratio out of total estimated vacancies. We have already referred to the order of this Court dated 08.03.1991 in W.P.No.3309 of 1991, upholding the G.O.Ms.No.1 PWD dated 02.01.1990. It is also not in dispute that executive instructions can be issued to fill up the gap till necessary Rules are framed under Article 309 of the Constitution. All these and other materials have been correctly considered by the Tribunal; and we are in agreement with the conclusion arrived at by it.

Under these circumstances, we do not find any error or infirmity or valid ground for interference in the order of the Tribunal. Consequently, the writ petition fails and the same is dismissed. No costs. In view of the dismissal of the main writ petition, connected WPMP.No.14894 of 2006, is dismissed as unnecessary.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   Government of Tamilnadu,
   Public Works Department
   Fort St. George
   Chennai 9.

2. The Chief Engineer (General0
   Public Works Department
   Chepauk, Chennai-5.

3. The Secretary
   Tamil Nadu Public Service
   Commission
   Government Estate, Chennai 2.

4. The Tamilnadu Administrative Tribunal,
   Chennai-104.

1 CC TO MR.M. SRIRAM, ADVOCATE SR 52346

2 CCS TO MR.S. VADIVELU, ADVOCATE SR 52320

1 CC TO MR.G. JAYACHANDRAN, ADVOCATE SR 52556

1 CC TO MR.N. SUBRAMANIAN, ADVOCATE SR 52487

1 CC TO G.P., SR 52824

1 CC TO MR.P. ANBARASAN, ADVOCATE SR 52513

Order in
W.P.No.7523 of 1997

Dt.06.11.2006

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